



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AEL Defense Corporation

File: B-251376

Date: March 22, 1993

Elizabeth A. Kaiser, Esq., and John Fowler, Esq., Saul, Ewing, Remick & Saul, for the protester.
David R. Hazelton, Esq., and Thomas D. Sydnor, II, Esq., Latham & Watkins, for EER Systems Corporation, an interested party.

Margaret A. Olsen, Esq., and Lee Johnson, Esq., Department of the Navy, Naval Air Systems Command, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency improperly made award to firm whose proposal did not conform to design specification without informing the protester of the relaxed requirement is denied where specification was not a mandatory requirement under solicitation.

DECISION

AEL Defense Corporation protests the award to EER Systems Corporation of a contract by the Department of the Navy under request for proposals (RFP) No. N00019-92-R-0006 for the integration and installation of a government-furnished helicopter night vision system (HNVS) into a government-furnished CH-53E Super Stallion transport helicopter. AEL contends that the Navy improperly evaluated EER's proposal against a relaxed mandatory minimum technical specification and improperly failed to inform AEL that the specification had been relaxed.

We deny the protest.

The RFP, issued on May 4, 1992, contemplated the award of a firm, fixed-price contract for the integration of the HNVS into the CH-53E helicopter. The requirement encompassed, among other things, the contractor's design for the installation of the system into the helicopter's current instrument panel, testing, and options for the production

and installation of the systems. The RFP included Federal Acquisition Regulation (FAR) § 52.215-16 (Alternate III) which advised offerors that the agency intended to evaluate proposals and award a contract without discussions with offerors, and that each initial offer should contain the offeror's best terms from a cost, price and technical standpoint.

The RFP provided the following evaluation factors for award, in descending order of importance: (1) technical (including technical requirements, integration approach, test and demonstration approach, and programs and schedules); (2) price; (3) management; and (4) integrated logistics support. The integration approach subfactor of the technical factor included "the extent to which the offeror's approach will meet or exceed the AS-5725 technical requirements [i.e., the system specification for the integration effort] and not degrade the performance, as well as any existing capabilities" of the government-furnished equipment. The system specification (AS-5725) required that the proposed installation and integration approach "not degrade the baseline CH-53E field of view, pilot and visual access." AS-5725 (attachment No. 1 to the RFP) further provided:

"[t]his specification is categorized as a zero-tier document (contractually binding) In the event of a conflict between the documents referenced herein and this specification, the requirements of this specification shall govern. Application of the specifications cited herein shall be limited to documents specifically cited in this specification and to specified portions of documents directly referenced therein (first-tier documents). These first-tier specifications and documents are requirements (contractually binding). All other referenced documents ([second-]tier and below) shall be for guidance only, unless specifically cited in this specification as being applicable requirements."

Proposals were submitted by five offerors, including AEL and EER by the closing date for receipt of proposals. The Navy determined that only EER's (at a proposed cost of \$6,614,695) and one other proposal (at a substantially higher cost) were technically acceptable. AEL's proposal, which offered the lowest cost, was found technically unacceptable for proposing to remove a critical instrument

from its current location on the instrument panel, seriously degrading the field of view in contravention of the RFP's requirements. Award was made to EER, without discussions, based upon a finding by the agency that the technical superiority of the other acceptable technical proposal was not worth the additional cost proposed by that offeror. This protest followed.

AEL has not protested the agency's determination of its technical unacceptability. AEL instead contends that had it known an instrument panel design which did not comply with drawing No. MS33572 (which is indirectly referenced in documents referenced in the RFP and which shows certain instruments in a "T" configuration on the panel) would be acceptable, the protester would have been able to submit a technically acceptable proposal. (The "T" configuration of MS33572 depicts three display panel controls (air speed, attitude and altitude radar or barometric) arranged side by side in a horizontal fashion with a fourth control (horizontal situation indicator) located below the center (attitude) control.) AEL contends that the "T" configuration was a mandatory requirement of the RFP.¹ AEL essentially contends that the Navy improperly relaxed the RFP's requirement for compliance with drawing No. MS33572 for EER without informing AEL of the relaxed specification.

The essence of a fair competitive procurement system is that bidders and offerors will be treated equally and, accordingly, that all offerors be provided a common basis for submission of proposals. IRT Corp., B-246991, Apr. 22, 1992, 92-1 CPD ¶ 378. In a negotiated procurement, any proposal which does not conform to the material, mandatory terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. Instruments S.A., Inc.; VG Instruments, Inc., B-238452; B-238452.2, May 16, 1990, 90-1 CPD ¶ 476. When an agency relaxes its requirements, either before or after receipt of proposals, it must issue a written amendment to notify all offerors of the changed requirements. FAR § 15.606. The facts here, however, do not support AEL's contentions of an alleged improper relaxation by the Navy of a mandatory requirement for a "T" configuration of panel instruments. The agency did not relax its minimum requirements for the awardee, EER, since the specification alleged to have been relaxed simply was not a mandatory requirement of the solicitation.

¹There is no indication that the other competitors believed that their proposed approaches were limited to the "T" configuration.

AEL initially contends that the "T" configuration is mandatory under the RFP because drawing No. MS33572 (representing the "T" configuration) was indirectly referenced in the system specification. We disagree that the drawing was a mandatory specification. As stated above, the RFP expressly provided that referenced documents that were second-tier and below were not contractually binding and were to be referred to by offerors for guidance purposes only. The detail specification for the CH-53E helicopter (SD-552-3-10), a first-tier document directly identified in the system specification, references MIL-I-18373, a second-tier document. MIL-I-18373 allegedly references drawing No. MS33572. It is clear that drawing No. MS33572 is at best, only a "second-tier and below" document and thus is not a mandatory requirement of the solicitation.

The protester alternatively alleges that the "T" configuration (although not labelled as drawing No. MS33572) was a first-tier, mandatory specification because it was referenced in another document which was mentioned in the RFP. Subsection 3.3.7.1.2 of the system specification provided that pilot workload and system-imposed task loads associated with the integrated system were not to degrade the pilot's capability to operate and complete required baseline CH-53E missions. The provision further stated that "[t]asks allocated to the pilot shall meet standard Human Engineering criteria (i.e., Woodson, 1981, Human Factors Design Handbook) regarding recognized operator functions (i.e., human capabilities and limitations)." AEL contends that this "T" configuration of instruments is illustrated on page 303 of the Woodson handbook, a first-tier document, (as one of six different instrument arrangements), and therefore the "T" configuration is a first-tier, mandatory requirement.

We are not persuaded by AEL's contentions. First, we do not think that the system specification's general reference to the full Woodson text is sufficient to impose a specific mandatory requirement for the "T" configuration here merely because the "T" configuration is included somewhere in the Woodson handbook. Page 303 of Woodson, as provided to us by the protester, relates to instrument arrangements, not pilot tasks and workload--the subject of the subsection of the RFP that actually contains the Woodson reference. We think the protester has mistakenly applied one specific page of the Woodson handbook in a way clearly not intended by the system specification's reference to the handbook. In any event, page 303 of the Woodson handbook lists the "T" configuration as only one of six different instrument arrangements for

vehicle operator work stations. (In fact, a different one of the six instrument arrangements depicted on that page is defined as the "standard basic flight instrument arrangement for rotary aircraft" and is not a "T" configuration.)² Finally, this page of the Woodson reference states that deviations from any of the six illustrated instrument arrangements (including the "T" configuration) were anticipated and permitted by the procurement activity subject to agency approval.

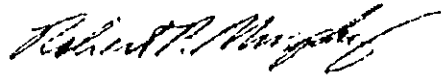
AEL similarly contends that the general "T" configuration is a mandatory requirement of the RFP because it is illustrated in Military Publication DH2-2 (entitled "AFSC Design Handbook for Crew Stations and Passenger Accommodations"), a document referenced in MIL-C-81774 which is a first-tier document because it is identified in the system specification. Subsection 3.3.7.1.3 of the RFP's system specification provides that the "labeling of equipment shall meet the criteria of . . . MIL-C-81774 subject to the [procurement activity] approval." We think AEL has again mistakenly cited a document for a purpose beyond its clearly intended use in the specification. The system specification references MIL-C-81774 in regards to the labeling of instruments not, as AEL contends, in regards to any required placement of the instruments. In any event, as with the Woodson document discussed above, the page of Military Publication DH2-2 provided by the protester includes the "T" configuration as only one of several illustrations, and it expressly provides that deviations from the listed instrument arrangements were anticipated and permitted subject to agency approval. Thus, AEL's contention that the "T" configuration is a mandatory requirement is not supported by reference to this specification.

AEL has not demonstrated that under the terms of the RFP (including its referenced documents), the "T" instrument arrangement was a mandatory technical requirement. Accordingly, based upon the record before us, including the RFP and EER's proposal, we have no reason to disturb the Navy's determination that the awardee proposed a technically acceptable approach to meet the RFP's integration

²AEL had earlier contended that drawing No. MS33572, a second-tier document depicting the "T" configuration, was relevant to this procurement because it related to rotary aircraft.

requirements. The protester's belief that the Navy relaxed its minimum mandatory requirements for the awardee is unsupported by the record.

The protest is denied.



for James F. Hinchman
General Counsel